

Senate Bill 489

By: Senators Chance of the 16th, Staton of the 18th, Tarver of the 22nd, Thompson of the 33rd and Rogers of the 21st

A BILL TO BE ENTITLED
AN ACT

To amend Title 7 of the Official Code of Georgia Annotated, relating to banking and finance, so as to enact the "Credit Enhancement Loan Act of 2008"; to provide for findings of the General Assembly; to provide for a short title; to provide for purposes; to provide for definitions; to provide for licensing of lenders by the Department of Banking and Finance; to provide for penalties for violations; to provide for fees payable to the department; to provide for requirements necessary for issuance of a license by the department; to provide for the form and contents of an application; to provide for revocation or suspension of a license; to provide for amounts of loans and interest rates; to prohibit multiple loans in certain situations; to provide for enforcement of loan agreements; to provide for disclosure forms for the customer; to provide for reports to credit bureaus; to require maintenance of financial records by licensees; to provide for reports to be filed with the commissioner; to provide for desist orders; to provide for appeals from actions of the department; to provide for nonenforcement of credit enhancement loans; to provide for related matters; to provide for an effective date and applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 7 of the Official Code of Georgia Annotated, relating to banking and finance, is amended by adding a new chapter to read as follows:

"CHAPTER 6B

7-6B-1.

This chapter shall be known and may be cited as the 'Credit Enhancement Loan Act of 2008.'

7-6B-2.

The General Assembly of Georgia finds:

(1) Customer education for unbanked and underbanked customers is necessary in order to educate them on the various options for customer credit and financial services that are available;

(2) Mainstream banking services should be made available to unbanked customers to meet their individual financial needs;

(3) Accurate and understandable disclosure of agreement terms, conditions, and the cost of obtaining credit is absolutely essential; and

(4) It is necessary to provide and support ongoing activities to equitably provide mainstream financial services and credit products to financially underserved customers while providing a vehicle to bridge the gap of the financial empowerment divide.

7-6B-3.

The purpose of this chapter is to:

(1) Provide a vehicle for banking services and mainstream credit products to build and rebuild credit histories to enable customers in all segments of the financial spectrum, especially the financially underserved and unbanked populations, to improve their credit ratings and qualify for mainstream financial services;

(2) Set forth a minimum set of parameters to establish a credit enhancement loan that other financial institutions may offer to qualified customers; and

(3) Recognize that oftentimes there is a high cost to a financial institution in serving this segment of the customer financial marketplace, and therefore a higher risk based interest rate shall be permitted to cover this higher risk when a credit enhancement loan is offered.

7-6B-4.

As used in this chapter, the term:

(1) 'Amount of the extension of credit' means the aggregate of the loan amounts, service fees, and other charges authorized by this chapter.

(2) 'Commissioner' means the commissioner of banking and finance.

(3) 'Credit enhancement loan' means a short-term loan that complies with all of the requirements of this chapter.

(4) 'Creditable assets' means cash or bank deposits, loans, or extensions of credit made as a licensee pursuant to this chapter or any other amounts as the commissioner may approve, or any combination of two or more of these amounts.

(5) 'Customer' means any person who borrows money from any licensee or who pays or obligates himself or herself to pay any money or otherwise furnishes any valuable consideration to any licensee for any act of the licensee as a licensee.

(6) 'Department' means the Department of Banking and Finance.

(7) 'Deputy' means a deputy commissioner of banking and finance.

(8) 'License' means the license issued by the commissioner under the authority of this chapter to issue credit enhancement loans.

(9) 'Licensee' means a person to whom one or more licenses have been issued.

(10) 'Loans' or 'loan' means a loan made within this state by a licensee pursuant to this chapter.

(11) 'Person' includes any person, firm, partnership, association, or corporation.

7-6B-5.

(a) No person shall engage in the business of offering credit enhancement loans in amounts of \$3,000.00 or less and contract for, exact, or receive, directly or indirectly, on or in connection with any credit enhancement loan, any charges whether for interest, compensation, consideration, or expense, or any other purpose whatsoever, which in the aggregate are greater than authorized by this chapter and without first having obtained a license from the commissioner. The term 'lending' as used in this Code section shall include, but shall not be limited to, endorsing or otherwise securing extensions of credit or contracts for the repayment of extensions of credit.

(b) The provisions of subsection (a) of this Code section shall apply to any person who seeks to avoid its application by any device, subterfuge, or pretense whatsoever.

(c) Any person not exempt from this chapter who fails to comply with or who otherwise violates any of the provisions of this chapter or any regulation of the department adopted pursuant to this chapter shall be guilty of a misdemeanor. Each violation shall be considered a separate offense. It shall be the duty of the commissioner to provide the district attorney of the court having jurisdiction of any offense under this chapter with facts and evidence in his or her actual or constructive possession and to testify as to those facts upon the trial of any person for any offense under this chapter.

(d) Any contract for the extension of credit the making or collecting of which violates any provision of this chapter or regulation issued pursuant to this chapter, except as a result of accidental or bona fide error of computation, shall be void; and the licensee or any other party in violation shall have no right to collect, receive, or retain any principal or charges whatsoever with respect to that extension of credit.

1 7-6B-6.

2 Each licensee, for the purpose of defraying necessary expenses of the commissioner and
3 his or her agents, shall pay to the commissioner the fees prescribed in Code Section 7-6B-7
4 at the times specified therein.

5 7-6B-7.

6 (a) No person shall engage in or offer to engage in the business of credit enhancement
7 loans regulated by this chapter unless and until a license has been issued by the
8 commissioner. The commissioner shall issue a license under this chapter if he or she finds
9 that the applicant has, on a consolidated basis and computed in accordance with generally
10 accepted accounting principles, a net worth of not less than \$1 million at the time of
11 application for a license.

12 (b) Upon the receipt of an application, the commissioner shall start an investigation. The
13 commissioner shall approve or deny every application for a license within 90 days from the
14 date a complete application is submitted. This period may be extended by the written
15 consent of the applicant. The commissioner shall notify the applicant of the date when the
16 application is deemed complete. In the absence of approval or denial of the application,
17 or consent to the extension of the 90 day period, the application shall be deemed approved
18 and the commissioner shall issue the license effective as of the first day after the 90 day or
19 extended period has elapsed. If the commissioner reasonably determines from a
20 preliminary investigation that the applicant does not satisfy the condition set forth in
21 subsection (a) of this Code section, the commissioner shall so notify the applicant in
22 writing and offer specific findings of fact as to the provisions of this Code section that have
23 not been met. The applicant shall then be entitled to an informal hearing on the decision
24 that the applicant does not satisfy the conditions set forth in this Code section, provided
25 that the applicant requests an informal hearing in writing within 30 days after the
26 commissioner has mailed the notification of failure to the applicant. In the event of an
27 informal hearing, to be held in the offices of the commissioner, the commissioner shall
28 reconsider the application and, after the hearing, issue a written order granting or denying
29 the application.

30 (c) Each licensee shall continue at all times to have available for the operation of the
31 business on a consolidated basis and computed in accordance with generally accepted
32 accounting principles a net worth of not less than \$1 million. The requirement of this
33 subsection shall be maintained throughout the period of the license, and failure to maintain
34 this requirement shall be grounds for the revocation of a license under the provisions of
35 Code Section 7-6B-10.

1 7-6B-8.

2 (a) The application for license shall be made on a form prepared and furnished by the
3 commissioner and shall state all of the following:

4 (1) The fact that the applicant desires to engage in business under this chapter;

5 (2) Whether the applicant is an individual, partnership, association, or corporation;

6 (3) The name and address of the person who will manage and be in immediate control
7 of the business;

8 (4) The names and addresses of the owners of the business and their percentage of equity
9 in the business, unless the commissioner deems it not feasible to furnish the information
10 because of the number of stockholders involved. This paragraph shall not apply to
11 publicly held corporations and their operating subsidiaries; and

12 (5) When the applicant proposes to commence doing business.

13 (b) The statements made in this application shall be sworn to by the applicant or the
14 persons making the application on the applicant's behalf.

15 (c) At the time of making an application, the applicant shall pay the department \$2,500.00
16 as a fee for investigating the application, which shall be retained whether or not a license
17 is granted to the applicant.

18 7-6B-9.

19 (a) A licensee may conduct and carry on its business only at the location or locations that
20 are approved by the commissioner, and no changes shall be made from one location to
21 another without prior notice to the commissioner.

22 (b) The commissioner may issue more than one license to the same licensee for multiple
23 places of business upon compliance with all the provisions of this chapter governing
24 issuance of a license.

25 (c) If any change occurs in the primary name and address of the licensee, the legal agent
26 of a licensed corporation, or in the membership of any licensed partnership, a full statement
27 of the change, sworn to as required by subsection (b) of Code Section 7-6B-8 for an
28 original application, shall be filed with the commissioner within 30 days.

29 7-6B-10.

30 (a) The commissioner may issue an order revoking or suspending the right of a licensee
31 and an officer, agent, employee, or representative to do business in Georgia as a licensee
32 if the commissioner finds, after due notice and hearing, or opportunity for hearing, that the
33 licensee or an officer, agent, employee, or representative of that licensee has done any of
34 the following:

(1) Materially failed to comply with the rules, regulations, instructions, or orders issued by the department;

(2) Materially failed or refused to make its reports to the commissioner;

(3) Failed to pay the fees for its examination and supervision that are validly due and owed; or

(4) Knowingly furnished false information to the commissioner or the department.

Upon receipt of an order revoking or suspending the right of that licensee to do business in Georgia from the commissioner, the licensee shall immediately surrender his or her license to the commissioner. Within five days after the entry of an order to cease business in Georgia, the commissioner shall place on file his or her findings of fact and mail or otherwise deliver a copy to the licensee. Any licensee who fails to make any extension of credits during any period of one year after being licensed shall surrender his or her license to the commissioner.

(b) Any licensee may surrender any license by delivering it to the commissioner with written notice of the surrender, but the surrender shall not affect the licensee's civil or criminal liability for acts committed prior to the surrender of the license.

(c) No revocation, suspension, or surrender of any license shall impair or affect the obligation of any preexisting lawful contract between the licensee and any obligor.

(d) The commissioner, in his or her discretion, may reinstate suspended licenses or issue new licenses to a person whose license or licenses have been revoked or surrendered if and when he or she determines no fact or condition exists which clearly would have justified the commissioner in refusing originally to issue the license under this chapter.

(e) The licensee shall be entitled to a formal appeal and hearing as prescribed in Code Section 7-6B-20.

7-6B-11.

(a) Every licensee under this chapter shall make credit available through credit enhancement loans in an amount not exceeding \$3,000.00 at a maximum interest rate of up to 19.9 percent per annum. Interest shall be contracted for and collected at the single simple interest rate applied to the outstanding balance that would earn the same amount of interest as the initial rate for payment according to schedule.

(b) Interest on credit enhancement loans made pursuant to this Code section shall not be paid, deducted, or received in advance. Interest shall not be compounded, but interest on extension of credits shall:

(1) Be computed and paid only as a percentage of the unpaid principal balance or portion of the unpaid principal balance; and

(2) Be computed on the basis of the number of days actually elapsed.

1 If, however, part or all of the consideration for a credit enhancement loan is the unpaid
2 principal balance of a prior credit enhancement loan, then the principal amount payable
3 under the new credit enhancement loan may include any unpaid interest on the prior credit
4 enhancement loan which has accrued within 90 days before the making of the new credit
5 enhancement loan. For the purpose of computing interest, a day shall equal 1/365 of a
6 year. Any payment made on a credit enhancement loan shall be applied first to any accrued
7 interest and then to principal. Any portion or all of the principal balance on a credit
8 enhancement loan may be prepaid at any time without penalty.

9 (c) Minimum payment requirements on a credit enhancement loan shall be 4 percent of the
10 loan amount or \$25.00, whichever is greater. Customers shall be billed monthly, at a
11 minimum.

12 (d) A maximum one-time underwriting fee shall not exceed \$10.00.

13 (e) The maximum monthly maintenance fee shall not exceed \$30.00.

14 (f) The maximum fee for a late payment on a credit enhancement loan shall be \$25.00.

15 (g) The maximum fee charged for a returned check from a borrower shall be \$30.00.

16 (h) The minimum term of a credit enhancement loan shall be three months.

17 (i) Every licensee under this chapter shall report, on a periodic basis based on accepted
18 industry standards, credit related data, as incurred, and without discrimination, to major
19 credit bureaus to assist customers who pay in a timely manner in building or rebuilding
20 their credit histories.

21 (j) Every licensee under this chapter shall graduate customers to better interest rates and
22 other terms based on positive payment histories in a manner submitted by the licensee to
23 the commissioner and approved by the commissioner.

24 (k) Every licensee under this chapter shall offer and encourage customers to participate in
25 programs designed to enhance financial literacy.

26 (l) If a money judgment is obtained against any party on any credit enhancement loan
27 made under the provisions of this Code section, neither the judgment nor the credit
28 enhancement loan shall carry, from the date of the judgment, any interest in excess of
29 8 percent per annum.

30 (m) Every licensee under this chapter shall charge only those fees and interest as
31 authorized in this Code section and filed with the commissioner.

32 (n) Every licensee under this chapter shall determine the credit worthiness of a customer
33 applying for a credit enhancement loan based on industry accepted or proprietary credit
34 models.

1 7-6B-12.

2 (a) A licensee shall not make credit enhancement loans in one office to any customer who
3 already has an outstanding credit enhancement loan in another office operated by the same
4 entity or by another licensee that is an affiliate, parent, subsidiary, or under the same
5 ownership, management, or control, whether partial or complete.

6 (b) A licensee shall take every reasonable precaution to prevent granting credit
7 enhancement loans in violation of subsection (a) of this Code section.

8 (c) A licensee may service credit enhancement loans and modify the terms of the loans
9 within the limits authorized by Code Section 7-6B-13 at any office operated by that
10 licensee regardless of where the credit enhancement loan was originated.

11 7-6B-13.

12 (a) A licensee may not take an assignment of earnings of the customer for payment or as
13 security for payment of a credit enhancement loan. An assignment of earnings in violation
14 of this Code section shall be unenforceable by the assignee of the earnings and shall be
15 revocable by the customer. However, nothing in this Code section shall restrict a licensee
16 and customer from entering into an agreement whereby repayment of a credit enhancement
17 loan can be made through automatic payroll deductions, direct withdrawal from a checking
18 account, or other automatic repayment plans.

19 (b) An agreement between a licensee and a customer pursuant to a credit enhancement
20 loan under this chapter pertaining to default by the customer shall be enforceable only to
21 the extent that the customer fails to make a payment as required by the agreement.

22 (c) No licensee shall deny any credit enhancement loan or discriminate in the fixing of the
23 amount, duration, application procedures, or other terms or conditions of any credit
24 enhancement loan or services because of the race, color, religion, national origin, sex, or
25 marital status of the applicant or any other person connected with the transaction.

26 (d) With respect to a credit enhancement loan or services made pursuant to the provisions
27 of this chapter, the agreement shall not provide for payment by the customer of attorney's
28 fees.

29 (e) No licensee shall make any credit enhancement loan within this state which shall in any
30 way be secured by real property.

31 (f) No licensee shall engage in any unfair method of competition or unfair or deceptive
32 trade practices in the conduct of making or providing any credit enhancement loans or
33 services to customers pursuant to this chapter or in collecting or attempting to collect any
34 money alleged to be due and owing by a customer.

1 7-6B-14.

2 (a) At the time a credit enhancement loan is made available to a customer, the licensee
3 shall deliver to the customer or, if there are two or more customers to such a loan, a copy
4 of a written statement, showing in clear and distinct terms all of the following:

5 (1) The name and address of the licensee and one of the primary obligors on the credit
6 enhancement loan;

7 (2) The date of the contract;

8 (3) A schedule or description of required payments;

9 (4) All applicable interest rates; and

10 (5) Any financial literacy materials available to the customer.

11 (b) At each of its places of business in Georgia, the licensee shall make readily available
12 to the customer, in a form prescribed by the commissioner, a full and accurate schedule of
13 charges on all credit enhancement loans currently being made available by the licensee.

14 (c) A copy of that schedule required by subsection (b) of this Code section shall be filed
15 in the office of the commissioner.

16 (d) No licensee shall require the customer to agree to or execute any confession of
17 judgment or power of attorney in favor of any licensee or in favor of any third person, and
18 any confession of judgment or power of attorney taken in violation of this subsection shall
19 be absolutely void.

20 7-6B-15.

21 No licensee subject to this chapter shall advertise, display, distribute, telecast, or broadcast
22 or cause or permit to be advertised, displayed, distributed, telecast, or broadcast in any
23 manner whatsoever any false, misleading, or deceptive statement or representation with
24 regard to the rates, terms, or conditions of credit enhancement loans. The commissioner
25 may require that charges or rates of charge, if stated by a licensee, be stated fully and
26 clearly in any manner that the commissioner deems necessary to prevent misunderstanding
27 by prospective customers. The commissioner may permit or require licensees to refer in
28 their advertising to the fact that their business is under state supervision, subject to any
29 conditions required by the commissioner to prevent an erroneous impression as to the scope
30 or degree of protection provided by this chapter.

31 7-6B-16.

32 (a) Each licensee shall maintain all financial books and records directly relating to any
33 credit enhancement loans made or provided under this chapter reasonably required by the
34 commissioner to be kept for two years; and the commissioner, any deputy, or a duly
35 authorized examiner or agent or employee may examine those records at any reasonable

1 time to determine whether the licensee is complying with this chapter and the rules issued
2 to implement this chapter. The required financial books and records may be maintained
3 in any form authorized by the commissioner. The financial books and records of each
4 licensed office shall be clearly segregated. When a licensee maintains its financial books
5 and records outside of Georgia, the licensee shall make them available for examination at
6 the place where they are maintained and shall pay for all reasonable and necessary
7 expenses incurred by the commissioner in conducting any examination. Where the data
8 processing for any licensee is performed by a person other than the licensee, the licensee
9 shall provide to the commissioner a copy of a binding agreement between the licensee and
10 the data processor which allows the commissioner, any deputy, or a duly authorized
11 examiner or agent or employee to examine that particular data processor's activities
12 pertaining to the licensee to the same extent as if the data processing services were being
13 performed by the licensee on its own premises; and, when billed by the commissioner, the
14 licensee shall reimburse the commissioner for all costs and expenses incurred by the
15 commissioner in an examination under this subsection.

16 (b) Each licensee shall file annually with the commissioner on or before March 31 for the
17 12 month period ending the preceding December 31 reports on forms prescribed by the
18 commissioner. These annual reports shall disclose in detail and under appropriate headings
19 any changes in the information contained in the original license application and other
20 information necessary to show that the licensee continues to be in compliance with this
21 chapter. Reports shall be verified by the oath or affirmation of the owner, manager,
22 president, vice president, cashier, secretary, or treasurer of the licensee.

23 (c) If a licensee conducts another business or is affiliated with other licensees under this
24 chapter or if any other situation exists under which allocations of expense are necessary,
25 the licensee or licensees shall make that allocation according to appropriate and generally
26 accepted accounting principles.

27 7-6B-17.

28 The department may issue all rules it deems necessary in implementing this chapter and in
29 providing for the protection of the borrowing public and the efficient management of
30 licensees under this chapter and to give all necessary instructions to these licensees for the
31 purpose of interpreting this chapter. All licensees under this chapter and their officers,
32 agents, and employees shall comply fully with all of the rules and instructions. When
33 issued, any rule shall be forwarded by mail to each licensee at its licensed place of business
34 at least 20 days prior to the rule's effective date.

1 7-6B-18.

2 The commissioner may issue subpoenas and compel attendance of witnesses, administer
3 oaths, conduct hearings, and transcribe testimony in making the investigations and
4 conducting the hearings required by this chapter or in the other discharge of his or her
5 duties and give any publicity to his or her investigations and findings as he or she may
6 deem best for the public interest.

7 7-6B-19.

8 When the commissioner has reasonable cause, supported by written evidence, to believe
9 that any person is violating or is threatening to violate any provision of this chapter, the
10 commissioner may in addition to all actions provided for in this chapter and without
11 prejudice to those other actions enter an order requiring a person to desist or to refrain from
12 a violation; and an action may be brought in the name of the commissioner to enjoin the
13 person from engaging in or continuing the violation or from doing any act or acts in
14 furtherance of the violation. In any action to desist, an order or judgment may be entered
15 awarding any preliminary or final injunction as may be deemed proper. In addition to all
16 other means provided by law for the enforcement of a restraining order or injunction, the
17 court in which the action is brought may impound and appoint a receiver for the property
18 and business of the defendant, including any books, papers, documents, and records that
19 the court deems reasonably necessary to prevent violations of this chapter through or by
20 means of the use of that property and business. The receiver, when appointed and
21 qualified, shall have those powers and duties pertaining to custody, collection,
22 administration, winding up, and liquidation of the property and business as shall from time
23 to time be conferred upon him or her by the court.

24 7-6B-20.

25 Any person aggrieved by any rule, order, or act of the department may appeal to the
26 commissioner for review upon giving notice in writing within 60 days after such rule,
27 order, or act is adopted, issued, or done. Any aggrieved party to a decision of the
28 department shall be entitled to an appeal pursuant to Chapter 13 of Title 50, the 'Georgia
29 Administrative Procedure Act.'

30 7-6B-21.

31 No credit enhancement loan made after July 1, 2008, that is made outside this state in the
32 amount of or the value of \$3,000.00 or less for which greater consideration or charges than
33 are authorized by this chapter have been charged, contracted for, or received shall be
34 enforced in this state. This prohibition shall not apply to credit enhancement loans in

4 SECTION 2.7 **SECTION 3.**

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